Supreme Court, U.S.
FILED
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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

TERM, 1970

No. 832

J. D. WILHITE,

Petitioner,

versus

CITY OF MONROE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

J. CARL PARKERSON,
P. O. Box 15,
Monroe, Louisiana,
Attorney for Petitioner.

J. G. HAUSER, INC., "LEGAL PRINTERS", 441 GRAVIER ST., NEW ORLEANS, LA.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

J. D. WILHITE PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT OF THE SUPREME COURT OF LOUISIANA.

OPINIONS BELOW

There was no formal, written opinion of the decision in the City Court of the City of Monroe, Ouachita Parish, State of Louisiana, in CITY OF MONROE v. J. D. WILHITE. Its oral decision is contained in the record of the City Court proceedings, which is in the record of the Louisiana Supreme Court. The opinion of the Supreme Court of Louisiana, rendered on March 30, 1970, is reported at 233 So. 2d 535 (1970) and set forth herein at Appendix A, as attached.

JURISDICTION

The judgment of the Supreme Court of Louisiana, the highest court in which a decision could be had was entered on March 30, 1970. The judgment became final after fourteen (14) days, on April 13, 1970, pursuant to Rule XI § 1, of the Rules of the Louisiana Supreme Court. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257.

CONSTITUTIONS, STATUTES AND CASES INVOLVED

Constitution of United States, Amendment VI
Constitution of United States, Amendment XIV
28 U.S.C.A. § 1257
Duncan v. State of Louisiana, 391 U.S. 145 (1968)
Code of Criminal Procedure, State of Louisiana, Article 24-6
City Code of Monroe, State of Louisiana, Section 24-6
City Code of Monroe, State of Louisiana, Section 24-8
City Code of Monroe, State of Louisiana, Section 1-8

QUESTION PRESENTED

Is a defendant who is prosecuted by the City of Monroe for violation, arising out of a single act, of two (2) City ordinances with an aggregate possible penalty of one (1) year imprisonment and or ONE THOUSAND ($1,000.00) DOLLARS fine, entitled to the protection of the Constitutionally guaranteed right to a trial by jury under the rule announced by this Court in *Duncan v. State of Louisiana*, 391 U.S. 145?

STATEMENT OF THE CASE

This case originated in the Monroe City Court. The defendant, J. D. Wilhite, was charged by affidavit with

violating city ordinances by driving a motor vehicle while under the influence of intoxicants and speeding. He was tried, over his objection, without the benefit of a jury on the question of guilt, found guilty of both charges, and sentenced to fines of FOUR HUNDRED THIRTY-FIVE ($435.00) DOLLARS and FIFTEEN ($15.00) DOLLARS, respectively, plus TEN ($10.00) DOLLARS costs of Court on each charge.

Bill of Exception Number One (1) was reserved to the overruling by the trial judge of the motion for jury trial, or the objection to being tried without a jury. The defendant was tried by the judge alone.

Under the ordinances of the City of Monroe, as per the trial judge's statement for the record, the maximum penalty to which the defendant was exposed was ONE THOUSAND ($1,000.00) DOLLARS in fines, plus court costs, and/or one (1) year in jail. The city ordinance fixes the maximum penalty for driving while intoxicated at FIVE HUNDRED ($500.00) DOLLARS and or six (6) months in jail, and the maximum penalty for speeding at FIVE HUNDRED ($500.00) DOLLARS and or six months in jail.

The appeal to the Supreme Court of Louisiana was perfected and made timely and assigned Docket No. 50,040. A decision was rendered on March 30, 1970, affirming the conviction and sentence, rejecting all Bills of Exceptions. The judgment became final after the expiration of fourteen (14) days on April 13, 1970, according to Rule XI § 1 of the Rules of the Louisiana Supreme Court.

The Supreme Court of Louisiana, through Justice Sanders, ruled that the decision of this Court in *Duncan*

v. State of Louisiana, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968), does not require a jury trial where a defendant is prosecuted in a single trial for two (2) offenses, arising out of the same act, in which the aggregate possible penalty is one (1) year imprisonment and/or ONE THOUSAND ($1,000.00) DOLLARS in fines.

This case squarely puts the issue before this Court to decide whether or not the two (2) charges brought against the defendant, arising out of one (1) act on the defendant's part, meets the criteria of the serious crime alluded to by this Court in *Duncan v. State of Louisiana*, 391 U.S. 145 (1968), thereby requiring a trial by jury.

HOW THE FEDERAL QUESTION WAS RAISED

The defendant, prior to going to trial, objected to being tried without the benefit of a jury, and moved for a jury trial on both charges. The Court overruled the defendant's objection to going to trial without the benefit of a jury on both charges, and denied the motion for a jury, to which ruling a Bill of Exception was duly reserved by the defendant, and noted by the Court, as is more fully reflected by the complete note of evidence contained in the record of the Louisiana State Supreme Court.

REASONS FOR GRANTING THE WRIT

The Court below has decided a federal question of substance in a way not in accord with the applicable decisions of this Court, in that *Duncan v. State of Louisiana* held that the States cannot deny a request for a jury trial in serious criminal cases. This Court in *Duncan* did not purport to establish a definite line between serious and petty crimes. Indeed, this Court stated "(T)he boundaries of the petty offense category have always

been ill-defined, if not ambulatory . . . it is necessary to draw a line in the spectrum of crime, separating petty from serious infractions. This process, although essential, cannot be wholly satisfactory, for it requires attaching different consequences to events which, when they be near the line, actually differ very little." 391 U.S. 145 at 160-161.

Under the circumstances of this case, the line has been drawn by the City of Monroe at six (6) months imprisonment and/or FIVE HUNDRED ($500.00) DOLLARS for each "offense", presumably relying on this Court's statement that "Crimes carrying possible penalties up to six (6) months do not require a jury trial **if they otherwise qualify as petty offenses"**, emphasis added, 391 U.S. 145 at 159. Petitioner's case falls squarely within the emphasized qualifying language. He has been prosecuted before a judge alone in one (1) proceeding for two (2) offenses arising out of the same act with an aggregate possible penalty of one (1) year imprisonment and ONE THOUSAND ($1,000.00) DOLLARS in fines.

It is well established that the penalty authorized and not the penalty received is of major relevance in determining whether a crime is serious. 391 U.S. 145 at 159. Other most important factors are the law and practices in this nation, "In determining whether the length of the authorized prison term or the seriousness of **other** punishment is enough in itself to require a jury trial, we . . . refer to objective criteria, chiefly the existing laws and **practices** in this Nation", emphasis added. 391 U.S. 145 at 161.

The laws in the State of Louisiana and the City of Monroe have been adapted to the guidelines laid down in

Duncan. A number of misdemeanors now carry sentences reduced to six (6) months imprisonment and/or FIVE HUNDRED ($500.00) DOLLARS. However, the "practice" of "stacking" charges against a defendant as a result on one (1) act emphasizes the need for jury trial.

As a practical matter, a defendant has no choice but to consolidate these charges for trial. If he refuses, he incurs greater expense for attorney's fees. Nor can it be realistically said that he is receiving "separate trials" since the judge alone would hear both "cases" with identical parties, witnesses, and factual situations; all on the same trial day. In a consolidated trial, the defendant is being tried for a "serious crime" carrying possible penalties, as in this case, of One (1) year imprisonment and/or ONE THOUSAND ($1,000.00) DOLLARS without the benefit of a jury. Petitioner, in full accord with this Court, ". . . would not, however, assert that every criminal trial—or any particular trial—held before a judge alone is unfair . . .", 391 U.S. 145 at 158, however, "providing an accused with the right to be tried by a jury . . . (gives) him an inestimable safeguard against the corrupt or overzealous prosecutor and against the complaint, biased, or eccentric judge." 391 U.S. 145 at 158.

This Court should take notice of the insurance consequences of a conviction of driving while intoxicated. The insurance companies in the State of Louisiana are allowed to consider such conviction as evidence of additional risk and raise the cost of insurance to an almost prohibitive amount. This is by virtue of state law and amounts to an increased penalty imposed upon the defendant, without the benefit of a jury trial on the question of guilt. These charges inherently involve opinion testimony by persons (police officers) with whom the

Court has daily contact, and upon whom the Court is partially dependent. The penalty to which the defendant is exposed depends solely upon the number of charges the same police officers decide to file, often as many as four (4), and almost always no less than two (2). This combination exposes defendants to **serious results,** and the protection of a jury trial is not too much to request under such circumstances.

CONCLUSION

To protect the rights of petitioner, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

J. CARL PARKERSON,
P. O. Box 15,
Monroe, Louisiana,
Attorney for Petitioner.

STATE OF LOUISIANA
PARISH OF OUACHITA

J. CARL PARKERSON, being duly sworn, deposed and said that he is the Attorney for the Appellant-Petitioner in the above entitled and numbered action and that the Appellee-Respondent, the City of Monroe, Louisiana, was served with a true and correct copy of the petition for a writ of certiorari on or before the 22 day of June, 1970.

/s/ J. CARL PARKERSON
J. CARL PARKERSON

SWORN TO AND SUBSCRIBED before me this 22 day of June, 1970.

/s/ DENNIE M. FARRAR
NOTARY PUBLIC

APPENDIX A

Received
Apr 1 1970
J. Carl Parkerson,
Attorney

SUPREME COURT OF LOUISIANA
Office of Clerk
301 Loyola Ave.
Room No. 220
New Orleans, Louisiana 70112

Dear Sir:

Attached you will find copy of opinion in a case which you handled.

The judgment in this case will become final at the expiration of fourteen (14) days from the date appearing on the first page of the opinion, in conformity with the provisions of Section 1 of Rule XI of the Supreme Court, as revised and amended April 1, 1962, unless application for rehearing reaches this office and is filed within the delay provided. This opinion is sent to you for your convenience and should be returned to this office within ten days.

Cordially yours,
Harold A. Moise, Jr.
Clerk.

Monday Mar 30 1970

SUPREME COURT OF LOUISIANA

NO. 50,040

CITY OF MONROE

V.

J. D. WILHITE

ON APPEAL FROM THE CITY COURT OF THE CITY OF MONROE FOR THE PARISH OF OUACHITA, STATE OF LOUISIANA HONORABLE W. L. CROWE, JUDGE.

SANDERS, Justice.

The City of Monroe charged the defendant in separate affidavits with driving an automobile under the influence of alcohol in violation of Section 24-6 of the City Ordinances and driving in excess of the speed limit in violation of Section 24-8 of the City Ordinances. By agreement between the City Attorney and defense counsel, the cases were consolidated for trial. Defendant moved for a jury trial, relying upon the decision of the United States Supreme Court in Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 491 (1968). The City Judge overruled the motion. After trial, the City Judge found the defendant guilty of both charges. The senteneed him to pay a fine of $425.00 and costs on the charge of driving under the influence of alcohol and a fine of $15.00 and costs on the charge of speeding.

Defendant appealed, relying upon the Bill of Exceptions reserved to the denial of a jury trial.

Under the City Ordinances each of the two charges has a maximum penalty of six months imprisonment and a $500.00 fine. Defendant contends that since the aggregate sentence was one year imprisonment and a $1000.00 fine, he is entitled to a jury trial.

In Duncan v. Louisiana, supra, the United States Supreme Court held the Fourteenth Amendment required a jury trial for all "serious crimes" in state courts. From its holding, the court excluded petty offenses, those punishable by no more than six months imprisonment and a $500.00 fine. See State v. Orr, 253 La. 752, 219 So. 2d 775.

After the Duncan decision, the Louisiana Legislature amended[1] Article 779 of the Louisiana Code of Criminal Procedure to read as follows:

> "A defendant charged with a misdemeanor in which the punishment *may* be a fine in excess of five hundred dollars or imprisonment for more than six months shall be tried by a jury of five jurors, all of whom must concur to render a verdict; provided, however that a defendant charged with such an offense may waive a trial by jury and elect to be tried by the court." (Italics ours).

No justification can be found in the constitutional and statutory authority for aggregating the penalties authorized for two or more separate offenses to determine the right to a jury trial. The right to a jury trial is tested by the punishment authorized for the particular offense. The consolidation of the cases for trial does not alter this rule. Consolidation is a procedural device to conserve trial time. See LSA-C. Cr. P. Art. 706.

In the present case, neither of the two offenses carried a greater punishment than a fine of $500.00 or six months imprisonment. Hence, under Article 779 of the Louisiana Code of Criminal Procedure, a jury trial is unauthorized.

For the reasons assigned, the conviction and sentence are affirmed.

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[1] Act No. 635 of 1968.

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Respondent

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA BY CITY OF MONROE, LOUISIANA

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REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA BY CITY OF MONROE, LOUISIANA

STATEMENT

The City of Monroe states as its position in this matter that it adopts as correct the decision of the Supreme Court of Louisiana complained of by Defendant, namely, *City of Monroe v. J. D. Wilhite*, 233 So. 2d 535 (1970).

Further, and at the outset, the City of Monroe desires to clarify and amplify certain portions of the Statement of the Case as contained in the Application of Defendant.

(1) The Defendant was charged by separate affidavits with the violation of two (2) separate and distinct ordinances of the City of Monroe, namely, Section 24-6 of the *City Code of Monroe*, commonly referred to as "DWI", which is quoted as follows:

"Sec. 24-6. Driving under influence of alcoholic beverage.

No person shall operate a vehicle while under the influence of any alcoholic liquor or beverage, or any other matter or substance of any other kind or description containing alcohol, irrespective of the alcoholic content thereof. When the physical or mental faculties of any vehicle operator have been affected sufficiently to make the driving or operation of a vehicle in any degree less safe, such operator shall be 'under the influence' within the meaning of this section. (Ord. No. 3047, art. III, rule 3, 11-24-53; Ord. No. 3136, Sec. 1, 5-8-56; Ord. No. 3273, 7-11-58)."

And, secondly, with the violation of Section 24-8 of the *City Code of Monroe*, commonly referred to as "Speeding", which is quoted as follows:

"Sec. 24-8. Speed limits.

No person shall operate a vehicle in excess of fifteen miles an hour past any school ground while any child is occupying such ground. In all other places a vehicle shall not exceed twenty-five miles an hour, except that it shall be unlawful to operate a vehicle in excess of the hereinafter specified speeds, along the streets named as follows:

* * * * *

(3) Thirty-five miles an hour:

* * * * *

(f) North Eighteenth Street, between Forsythe Avenue and Louisville Avenue.

* * * * * "

(2) The possible maximum penalty upon being convicted of the violation of any one (1) ordinance of the City of Monroe where no specific penalty is provided, is con-

tained in Section 1-8 of the *City Code of Monroe*, which says:

> "Sec. 1-8. General penalty — Continuing violations.
>
> It shall be unlawful for any person to violate or fail to comply with any provision of this Code and where no specific penalty is provided therefor, the violation of, or failure to comply with, any provision of this Code shall be punished by a fine not exceeding five hundred dollars or imprisonment for a term not exceeding six months or by both such fine and imprisonment within the discretion of the court, together with court costs and expenses. Each day any violation of, or failure to comply with, any provision of this Code continues shall constitute a separate offense. (Ord. No. 3836, Sec. 1, 9-24-68)"

(3) The two (2) separate and distinct charges pending against the Defendant, to wit: DWI and speeding, were consolidated for trial by consent of the Attorney for the Defendant and the Attorney for the City of Monroe in order to expedite the trial of these two matters in the shortest possible time. This procedural device is designed to conserve trial time and is found in Article 493 of the Louisiana Code of Criminal Procedure, which is quoted as follows:

> "Upon motion of defendant, or of all defendants if there are more than one, the court may order two or more indictments consolidated for trial if the offenses and the defendants, if there are more than one, could have been joined in a single indictment. The procedure thereafter shall be the same as if the prosecution were under a single indictment."

This appeal then does not result from one (1) violation and one (1) possible fine of $1,000.00 in fine, plus costs of courts, and/or one (1) year in jail, but rather

represents an attempt by the Defendant to combine two (2) separate and distinct violations, each of which theoretically could result in a fine of $500.00, plus costs of Court, and or six (6) months in jail, and have this Court review this Application for Writs under *Duncan v. Louisiana*, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d. 491, as if the Trial Court's decision was the result possible from one charge and one conviction. In this instance, the Trial Court ruled on each charge separately at the cose of the evidence and assessed specific fines, court costs and default days to each finding of guilty. This Application for Writs, therefore, is actually two (2) separate Convictions, one from conviction of "DWI" and one from conviction of "Speeding", but the procedural consolidation for trial technically causes this matter to appear to be before this Court as one conviction.

ARGUMENT

The crux of Defendant-Appellee's logic in requesting this Court to extend its decision reached in *Duncan v. Louisiana*, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491, to the instant appeal is that "one (1) act" on Defendant's part subjected him to a possible penalty which Defendant contends meets the "serious crime" category born of the majority view in *Duncan v. Louisiana, supra*. This is a false premise in that the Defendant, by his actions, violated two separate and distinct ordinances of the City of Monroe, each of which must be judged separately for purposes of ascertaining guilt or innocence. Thus, the fact that Defendant sped in violation of posted speed limits is not related legally to the fact that Defendant drove a car on the streets of the City of Monroe while intoxicated. As a practical matter, these two facts did coincide, but this does not make them one violation or "act" legally. So it is that one may drive while intoxicated, and run over and

kill a pedestrian. In that event, cannot this person be charged under the laws of any State with the crimes of driving while intoxicated **and** manslaughter? In this example, although the elements of both crimes for a brief moment are all present, this person has committed two separate crimes under our law and may be charged with both crimes. Therefore, in the instant appeal, except for the consolidation of the trial of these two separate charges for the convenience of all parties, the Defendant would have theoretically only faced a possible sentence of $500.00 fine plus costs or six months in default of payment of fine for each separate violation.

The usual fines for these two offenses are generally known by the local bar and public and, upon being judged guilty, the Defendant in the instant case received these "usual" fines, just as he would had he chosen to plead guilty. This is included in argument to illustrate that in reality the Defendant knew that, if found guilty, he would be fined $425.00 plus $10.00 Court costs and in default of payment of fine 85 days for DWI, and $10.00 plus costs and in default of payment of fine two days for speeding. As Defendant knew they would be if he was found guilty, these fines were imposed by the Court. Therefore, the total fine possible under the Section 1-8 of the City Code of the City of Monroe, *supra*, was not a real threat to Defendant on either charge at any stage of the proceedings.

Finally, the Defendant in this matter cannot bring himself within his interpretation of *Duncan v. Louisiana*, *supra*, by fictionally cumulating several misdemeanors.

The basic criteria determining whether a person tried for a crime in Loiusiana is, or is not, entitled to trial by jury is found in Article VII, Section 41 of the *Louisiana*

State Constitution of 1921, which provision is quoted in part as follows:

> "Section 41. The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service. All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict."

Based on this provision of our Constitution, the Legislature has defined a misdemeanor in Article 933(4) of the *Louisiana Code of Criminal Procedure* as follows:

> "Except where the context clearly indicates otherwise, as used in this Code:
>
> * * * * *
>
> (4) 'Misdemeanor' means any offense other than a felony, and includes the violation of an ordinance providing a penal sanction."

Again following Article VII, Section 41 of the Constitution we find Article 779 of the *Louisiana Code of Criminal Procedure* saying:

> "A defendant charged with a misdemeanor in which the punishment **may** be a fine in excess of five hundred dollars, or imprisonment for more than six

> months shall be tried by a jury of five jurors, all of whom must concur to render a verdict; provided, however that a defendant charged with such an offense may waive a trial by jury and elect to be tried by the court."

The City of Monroe takes the position that under the cited Louisiana authority the Defendant does not have a right to a jury trial as the penal provision of the ordinances violated quite clearly must, at least, fall within the category of a misdemeanor. This Article was amended by Act No. 635 of 1968 by the Louisiana legislature following this Court's decision in the *Duncan* case. The City of Monroe therefore takes the position that under the cited Louisiana authority the Defendant does not have a right to a jury trial as the penal provision of the City of Monroe ordinances violated quite clearly must, at least, fall below the category of "serious crimes" as expressed by this Court in the *Duncan* decision.

The majority opinion in *Duncan v. Louisiana*, *supra*, is well known and understood by the Supreme Court of Louisiana as evidenced by its unanimous opinion in *State v. Beer*, 202 La. 756, 214 So. 2d 133 (1968). The City of Monroe understands this Court's holding in the *Duncan* case to be embodied in the following language from that opinion, to wit:

> "It is sufficient for our purposes to hold that a crime punishable by two years in prison is, based on past and contemporary standards in this country, a serious crime and not a petty offense." *88 S. Ct.* 1454.

Thus, this Court, after writing in terms of "serious" and "petty" crimes decided that two years falls under the "serious" category and that a person charged with a crime

calling for such a penalty is entitled under Articles VI and XIV of the *Constitution of the United States* to a jury trial, regardless of State law to the contrary, as a Constitutional guarantee.

The City of Monroe adopts, as its position, the dissenting opinion of Justices Harlan and Stewart in the *Duncan* case in its entirety, and quotes with particular approval the following:

> "This argument that jury trial is not a requisite of due process is quite simple. The central proposition of *Palko, supra*, a proposition to which I would adhere, is that 'due process of law' requires only that criminal trials be fundamentally fair.
>
> As stated above, apart from the theory that it was historically intended as a mere shorthand for the Bill of Rights, I do not see what else 'due process of law' can intelligibly be thought to mean. If due process of law requires only fundamental fairness, then the inquiry in each case must be whether a state trial process was a fair one. The Court has held, properly I think, that in an adversary process it is a requisite of fairness, for which there is no adequate substitute, that a criminal defendant be afforded a right to counsel and to cross-examine opposing witnesses. But it simply has not been demonstrated, nor, I think, can it be demonstrated, that trial by jury is the only fair means of resolving issues of fact." *88 S. Ct. 1468-1469.*

and

> "In sum, there is a wide range of views on the desirability of trial by jury, and on the ways to make it most effective when it is used; there is also considerable variation from State to State in local conditions such as the size of the criminal caseload, the ease or difficulty of summoning jurors, and other trial conditions bearing of fairness. We have before us; therefore, an almost perfect example of

> a situation in which the celebrated dictum of Mr. Justice Brandeis should be invoked. It is, he said, 'one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory * * *.' *New State Ice Co. v. Liebmann*, 285 U.S. 262, 280, 311, 52 S. Ct. 371, 386, 76 L. Ed. 747 (dissenting opinion).
>
> This Court, other courts, and the political process are available to correct any experiments in criminal procedure that prove fundamentally unfair to defendants. That is not what is being done today: instead, and quite without reason, the Court has chosen to impose upon every State one means of trying criminal cases; it is a good means, but it is not the only fair means, and it is not demonstrably better than the alternatives States might devise." *88 S. Ct. 1472.*

The City of Monroe further contends that under the holding of the *Duncan* case, cited hereinabove, any crime, other than federal, carrying a penalty of under two years may be classified as "petty" and that the majority opinion in Duncan only establishes that two years is considered "serious" enough for Amendments VI and XIV of the Federal Constitution to apply.

The maximum penalty involved in the instant cases is six months and therefore well under the "serious" crime standard of the *Duncan* case. This fact being true, there is no question but that the Constitution and laws of the State of Louisiana apply and neither the Defendant's rights under the Constitution of the State of Louisiana or the Constitution of the United States have been violated by virtue of the fact that he was tried by a Judge alone.

The Defendant has argued that this Court should take notice of the insurance consequences of a conviction of

driving while intoxicated. Neither this nor any other Court can, in its deliberations of the criminal law or procedure applicable to a specific criminal case, base its decision of guilt or innocence upon the possible social or economic factors involved, or the possible future inconvenience, embarrassment or expense to the Defendant.

The remainder of the Defendant's arguments express non-legal arguments which are not present in, or supported by, the record before this Court and which, therefore, cannot be considered in connection with this application.

CONCLUSION

In conclusion, the City of Monroe submits that this case was decided by the Supreme Court of Louisiana in a way entirely consistent and in complete accord with the applicable decisions of this Court.

Respectfully submitted,

CHARLES L. HAMAKER
Assistant City Attorney
Monroe, Louisiana
Attorney for Respondent.

CERTIFICATE

STATE OF LOUISIANA
PARISH OF OUACHITA

CHARLES L. HAMAKER, being duly sworn, deposed and said that he is an Assistant City Attorney for the City of Monroe in the above entitled and numbered action and that the Appellant-Petitioner was served with a true and correct copy of the petition for a writ of certiorari on or before the 8th day of October, 1970.

/s/ CHARLES L. HAMAKER
CHARLES L. HAMAKER

SWORN TO AND SUBSCRIBED before me this 8th day of October, 1970.

/s/ DAVID C. DARCEY
NOTARY PUBLIC